

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.MC.No. 3462 of 2007()

(CRIME NO.405 OF 2007 OF PATHANAMTHITTA POLICE STATION)

PETITIONER: ACCUSED NO.1 & 2:

- 1. ROY FRANKLIN GOMAS, AGED 30 YEARS,
S/O. FRANKLIN D.GOMAS, THUSHARA BHAVAN,
VALLAKKADAVU, VALIYATHURA, THIRUVANANTHAPURAM.**
- 2. JAIN FRANKLIN, W/O. FRANKLIN D.GOMAS,
-DO- -DO-**

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENTS: COMPLAINANT:

- 1. STATE OF KERALA, REP. BY
SUB INSPECTOR OF POLICE, PATHANAMTHITTA POLICE
STATION, (CRIME NO.407 OF 2007), REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**
- 2. JEENA MARY THOMAS, AGED 24 YEARS,
D/O. THOMAS JOHN, VADAKKETHIL VEEDU,
PATHANAMTHITTA P.O., KOZHENCHERRI TALUK,
PATHANAMTHITTA DISTRICT.**

BY PUBLIC PROSECUTOR SRI.P.RAVEENDRA BABU

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

R.BASANT, J
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Crl.M.C.No. 3462 of 2007
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Dated this the 16th day of November, 2007

ORDER

The petitioners face indictment in a prosecution under Section 498A read with 34 IPC. They are husband and mother in law of the de facto complainant. Final report has been filed. Cognizance has already been taken. The petitioners have already appeared before the learned Magistrate and have been enlarged on bail. The petitioners have now rushed to this Court with this petition under Section 482 Cr.P.C with a request that the proceedings against the petitioners may be quashed.

2. What is the reason? The only reason urged is that the allegations are not acceptable. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to invoke and exercise. The jurisdiction which is sought to be invoked is the extraordinary inherent jurisdiction available under Sec.482 Cr.P.C. It is by now trite that such jurisdiction has to be invoked sparingly and in exceptional cases only in aid of justice. Such jurisdiction is certainly not to be invoked as a matter of course. Sufficient, satisfactory and

compelling reasons must be shown to exist to justify the invocation of such jurisdiction. Ordinarily and normally an inductee must take resort to the provisions of the Code to claim premature termination of the proceedings. Such course is to claim discharge under Section 239/240 Cr.P.C. The Code contemplates that in a rare case notwithstanding the fact that cognizance has been taken on the basis of a Police report, the charges may be ground less, it is for the petitioners to take resort to the provisions under section 239/240 Cr.P.C. and claim premature termination by discharge under Section 239 Cr.P.C. Having gone through the entire materials produced and having heard the learned counsel for the petitioners. I find no reason to invoke the powers under Section 482 Cr.P.C. It is not a case of want of jurisdictional competence. In an appropriate case notwithstanding the availability of remedy under Section 239 Cr.P.C. the jurisdiction under Section 482 Cr.P.C can be invoked. But this certainly does not appear to me to be a fit case where such powers can or ought to be invoked.

3. This petition is accordingly dismissed. I make it clear that I have not intended to express any opinion on merits. It

shall be open to the petitioners to raise all the contentions in their attempt to claim discharge under Section 239 Cr.P.C.

4. Finally the learned counsel for the petitioners submits that if unnecessary insistence were made on the personal presence of the petitioners it would cause great hardship, prejudice and loss to the petitioners. I fail to understand why the learned Magistrate shall make such insistence. I find that no such personal appearance can or ought to be insisted at this stage. The petitioners can certainly appear through counsel and urge the plea for discharge.

(R.BASANT, JUDGE)

sj